

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CUSTODIO FRANCO-VALENCIA
aka Jesus Rios-Mendoza,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Criminal No. 10-CR-4243-L
Civil No. 11-CV-2103-L

**ORDER DISMISSING WITH
PREJUDICE PETITIONER'S
MOTION FOR REDUCTION OF
SENTENCE UNDER 28 U.S.C. § 2255**


On September 8, 2011, Petitioner Custodio Franco-Valencia ("Petitioner") filed a Motion for Reduction of Sentence pursuant to 28 U.S.C. § 2255. Petitioner essentially requests that this Court grant a downward departure of up to two points due to Petitioner's immigration removal status. The Court has reviewed the record in this case, which clearly establishes that on May 9, 2011, Petitioner waived both his right to appeal and to collaterally attack his conviction and sentence. (Plea Agreement ¶ XI.) Petitioner's motion raises no challenge to the validity of that waiver, therefore this Court lacks jurisdiction to consider any collateral challenge to his conviction and sentence. *See Washington v. Lampert*, 422 F.3d 864, 869-70 (9th Cir. 2005) (recognizing that if sentencing agreement's waiver of the right to file a federal habeas petition was valid, district court lacked jurisdiction to hear the case).

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1 Accordingly, Petitioner's Motion For Reduction of Sentence pursuant to 28 U.S.C. §
2 2255 is **DISMISSED WITH PREJUDICE.**

3 **IT IS SO ORDERED.**

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5 DATED: September 15, 2011

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7 M. James Lorenz
8 United States District Court Judge
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10 COPIES TO:
11 PETITIONER
12 U.S. ATTORNEY'S OFFICE
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